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C O N F I D E N T I A L SECTION 01 OF 02 ANKARA 003915

SIPDIS

DEPARTMENT FOR EUR/SE

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TAGS: PGOV PREL PHUM TU OSCE

SUBJECT: PENAL CODE AMENDMENTS INCLUDE HUMAN RIGHTS REFORMS

REF: ANKARA 1503

Classified by Polcouns John Kunstadter; reasons 1.5 b and d.

¶11. (U) Summary: A revised version of the Turkish Penal Code (TPC), currently under parliamentary review, includes measures that would: expand the definition of torture and increase prison sentences for those who commit torture; strengthen privacy rights; introduce home detention for minor crimes; and punish those who violate religious, political, property, and free speech rights. It would also punish those who "ridicule" judicial decisions. End Summary.

Extensive Overhaul of Penal Code

¶12. (U) The GOT has prepared an extensive overhaul of the 592-article TPC. Many of the amendments are technical and minor, but some represent significant measures designed to help bring Turkey into compliance with EU membership criteria. Parliament is engaged in a long process of reviewing and approving each new article (see reftel for previously adopted amendments).

Key Amendments

¶13. (U) Key elements of the new TPC include:

¶14. (C) Torture: Simple torture will be punished by 3-6 years imprisonment, up from 3-5 years currently. Civil servants convicted of simple torture will be sentenced to 5-10 years imprisonment. Anyone convicted of causing death by torture will be sentenced to life without parole, up from 20 years currently. Anyone convicted of causing permanent injury through torture will face 12-18 years imprisonment. In addition, torture will be more broadly defined. Under current law, police "maltreatment" is not defined as torture unless it occurs as part of a criminal investigation; under the TPC revisions, police could be charged with torture for beatings unrelated to an investigation.

-- Analysis: The extended prison terms for civil servants and expanded definition of torture are particularly important for eroding the climate of impunity for police who commit torture. Currently, police can beat people on the street and risk nothing more than a reprimand for "maltreatment." The new definition of torture is more in line with the standards of the European Court of Human Rights, which has often ruled against the GOT on torture cases.

¶15. (C) Privacy Rights: Anyone convicted of: listening to or recording private conversations; recording others' remarks without permission at community gatherings; or violating a person's privacy using film or photographs faces fines or prison terms ranging from 2 months to 6 years.

-- Analysis: Until the mid-1990s there was virtually no legal protection of privacy rights, and there were numerous complaints of improper recording by government officials or press. These latest reforms are part of a series of legal amendments in this field. Members of organizations representing Kurds, non-Muslims, and other groups out of the mainstream often complain that their meetings and private conversations are taped by the Government.

¶16. (U) Life Sentences: Language related to the death penalty, now abolished in peacetime, will be removed. The maximum

penalties will be "Heavy Life," meaning life without parole, and "Regular Life," meaning possible release after 30 years with good behavior.

¶17. (C) Judicial Rulings: "Ridiculing" judicial decisions will be defined as a crime, punishable by 1-3 years imprisonment.

-- Analysis: Clearly a sour note in an otherwise positive set of amendments -- not only restricting free speech but also introducing a new crime.

¶18. (U) Crimes Against Humanity: Genocide and crimes against humanity will be specifically defined as crimes punishable by life without parole. Founders or members of organizations responsible for such crimes will be subject to 10-20 years imprisonment and a life-long ban from public service. It will be possible to hold legal entities accountable for such crimes. The statute of limitations will not apply.

-- Analysis: MFA contacts have told us these amendments are related to Turkey's eventual accession to the International Criminal Court (ICC). Turkey will have to join the ICC before becoming a full EU member, and these are among a series of legal amendments needed to harmonize Turkish law with the ICC.

¶19. (U) Home Detention: For crimes punishable by prison terms of two years or less, courts will have the option of sentencing convicts to home imprisonment monitored by an electronic device. Courts will also have the option of allowing a convict to work at a designated location during his incarceration.

¶110. (U) Police Searches: Civil servants convicted of conducting improper searches of persons will face 2-6 months imprisonment.

¶111. (U) Property Rights: Anyone convicted of obstructing someone from purchasing or selling property will face 6-12 months imprisonment.

¶112. (U) Dissenting Views: Anyone convicted of obstructing the lawful expression of dissenting views will face 1-5 years imprisonment.

¶113. (U) Religious Freedom: Anyone convicted of obstructing lawful religious expression will face 6-12 months imprisonment.

¶114. (U) Political Rights: Anyone convicted of obstructing lawful political expression will face 6 months-2 years imprisonment, or 1-3 years for civil servants.

Comment

¶115. (C) The revised TPC reflects the efforts of a GOT committed to make the reforms needed for EU accession. However, as with other reforms, the effectiveness of these measures will be determined by the quality of implementation. Some of these measures will be resisted by the judiciary and security services.

PEARSON